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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
ADAK EAGLE ENTERPRISES, LLC)
d/b/a ADAK TELEPHONE UTILITY)
)
Petition for Waiver of the Commission's)
Rules to Obtain Accelerated USF)
Support and to Participate in NECA)
Pools and Tariffs)
_____)

CC Docket No. 96-45

**PETITION FOR WAIVER OF THE COMMISSION'S RULES
TO OBTAIN ACCELERATED USF SUPPORT
AND TO PARTICIPATE IN NECA POOLS AND TARIFFS**

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Filed: February 9, 2005

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1 seeks the waivers requested herein to allow AEE to immediately begin receiving high-cost USF
2 support based the higher current and projected costs it will incur to provide adequate telephone
3 service. AEE also seeks additional waivers to allow AEE to become a member of the National
4 Exchange Carrier Association (“NECA”) and to immediately participate in NECA pools and
5 tariffs.
6

7 Specifically, AEE requests the following waivers of the Commission’s rules:

8 (1) If the Commission determines it is necessary, a waiver of the definition of
9 “study area” contained in the Appendix-Glossary of Part 36 of the Commission’s rules;
10

11 (2) Waiver of sections 36.611 and 36.612 of the Commission’s historical cost
12 rules to allow AEE immediate access to USF high-cost loop support, effective January 1, 2005,
13 based on AEE’s current data for an interim period;

14 (3) Waiver of the October 1, 2004, and January 1, 2005, state USF
15 certification deadlines set forth in section 54.314(d) of the Commission’s rules;

16 (4) Waiver of sections 54.301(b) and 54.903(a)(3) of the Commission’s rules
17 to allow AEE to be eligible to receive local switching support (“LSS”) and interstate common
18 line support (“ICLS”) for the period beginning January 1, 2005; and
19

20 (5) Waivers of the definition of “telephone company” in section 69.2(hh) and
21 of the annual election filing deadline in section 69.3(e)(6) to allow AEE to become a member of
22 NECA and to immediately participate in NECA pools and tariffs.
23

24 Granting these waivers will ensure administration of the USF in a manner
25 consistent with the Commission’s goal of assisting local exchange carriers in serving high-cost
26 rural areas and maintaining affordable local service rates.
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In the event any additional waivers are necessary to expedite AEE's receipt of USF support and participation in NECA pools and tariffs, AEE requests that such waivers be considered and granted on the Commission's own motion. If some of the waivers requested herein will require substantially more time for review than others, AEE respectfully requests that those waiver requests be severed and those requiring less time be ruled upon while review of the other requests is pending.

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CC Docket No. 96-45

**PETITION FOR WAIVER OF THE COMMISSION'S RULES
TO OBTAIN ACCELERATED USE SUPPORT
AND TO PARTICIPATE IN NECA POOLS AND TARIFFS**

I. Introduction

Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility ("AEE"), by its attorneys, pursuant to section 1.3 of the Commission's rules,² requests a waiver of the Commission's rules as set forth herein to allow AEE to immediately begin receiving high-cost Universal Service Fund ("USF") support and participating in National Exchange Carrier Association, Inc. ("NECA") pools and tariffs. Specifically, AEE requests the following:

- (1) If the Commission determines it is necessary, a waiver of the definition of "study area" contained in the Appendix-Glossary of Part 36 of the Commission's rules;
- (2) Waiver of sections 36.611 and 36.612 of the Commission's historical cost rules to allow AEE immediate access to USF high-cost loop support, effective January 1, 2005, based on AEE's current data for an interim period;

_____)
² 47 C.F.R. § 1.3.

1 (3) Waiver of the October 1, 2004, and January 1, 2005, state USF
2 certification deadlines set forth in section 54.314(d) of the Commission's rules;

3
4 (4) Waiver of sections 54.301(b) and 54.903(a)(3) of the Commission's rules
5 to allow AEE to be eligible to receive local switching support ("LSS") and interstate common
6 line support ("ICLS") for the period beginning January 1, 2005; and

7 (5) Waivers of the definition of "telephone company" in section 69.2(hh) and
8 of the annual election filing deadline in section 69.3(e)(6) to allow AEE to become a member of
9 NECA and to immediately participate in NECA pools and tariffs.

10
11 In the event any additional waivers are necessary to expedite AEE's receipt of
12 USF support and participation in NECA pools and tariffs, AEE requests that such waivers be
13 considered and granted on the Commission's own motion. If some of the waivers requested
14 herein will require substantially more time for review than others, AEE respectfully requests that
15 those waiver requests be severed and those requiring less time be ruled upon while review of the
16 other requests is pending. For example, to the extent the waivers requested in (5) above can be
17 reviewed and decided before the other waiver requests, AEE requests that they be decided
18 separately to expedite AEE's eligibility to participate in NECA pools and tariffs while the other
19 waiver requests are pending.

20
21 **II. Background**

22 On October 8, 2004, AEE was issued Certificate of Public Convenience and
23 Necessity No. 702 by the Regulatory Commission of Alaska ("RCA") to operate as a public
24

1 utility for the provision of local exchange telecommunications service in Alaska.³ On
2 November 22, 2004, AEE filed a request with the RCA for designation as an eligible
3 telecommunications carrier (“ETC”) pursuant to section 214(e)(2) of the Act and section 54.201
4 of the Commission’s rules. AEE expects the RCA to grant AEE ETC designation in the near
5 future.
6

7 AEE is authorized to provide service within its certificated service area located on
8 Adak Island, Alaska. Adak Island is an isolated island located approximately 1,200 miles
9 southwest of Anchorage, Alaska, in the Aleutian Chain.⁴ As shown on the tariff sheets and maps
10 included in Attachment C, AEE’s certificated service area covers approximately 61,000 acres
11 and consists of that portion of Adak Island that was formerly a United States Naval Complex
12 (roughly, the northern one-half of the island). The remainder of Adak Island is part of the
13 Alaska Maritime National Wildlife Refuge. Outside of the former Adak Naval Complex, there is
14 no independent community on Adak Island.
15

16 Adak Island was actively used by the United States military beginning in the
17 1940s and throughout the Cold War. As a result of the Defense Base Closure and Realignment
18 Act of 1990 and the military drawdown and closure of Naval Security Group Activity, military
19 operations ended on Adak Island on March 31, 1997, and the Navy completed its withdrawal
20 effective September 30, 2000.
21

22 ³ See Attachment A, Certificate of Public Convenience and Necessity issued by the RCA. As
23 stated on the certificate, the RCA granted AEE a “temporary” certificate. The RCA has
24 indicated that it is primarily waiting for AEE to provide evidence of a loan commitment from the
25 United States Department of Agriculture, Rural Utilities Service (“RUS”) before a permanent
26 certificate is issued to AEE. See Attachment B, RCA Order No. U-03-76(3) (Jan. 19, 2005).
AEE has applied for the RUS loan and expects to receive the required loan commitment within
60 days.

27 ⁴ See Attachment C.
28

1 During its use of Adak Island, the military installed and operated its own utility
2 facilities for the Adak Naval Complex, including a communications system consisting of an
3 analog PBX switch, copper cable facilities, and limited amounts of fiber optic cable. Upon the
4 Navy's withdrawal, operational responsibility for the Navy's electric, water, wastewater, and
5 communication facilities was transferred to the Adak Reuse Corporation ("ARC"), a public local
6 redevelopment authority empowered to facilitate reuse and redevelopment of the Adak Naval
7 Complex. On November 17, 2000, the State of Alaska granted ARC's petition for Adak to
8 become a Second Class City under Alaska law. On February 28, 2001, the RCA granted ARC
9 d/b/a Adak Telephone a temporary exemption from Alaska certification requirements for public
10 utilities. ARC conveyed the electric, water, and wastewater systems to the City of Adak, but the
11 City of Adak declined to accept the communications system and provide local exchange
12 telephone service to the public. AEE was the only entity willing to undertake the provision of
13 public telephone service on Adak Island. On September 19, 2003, the RCA transferred ARC
14 d/b/a Adak Telephone's temporary operating authority to AEE.
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18 Effective March 17, 2004, ownership of most of the land and improvements of the
19 Adak Naval Complex (including the existing communications facilities) were conveyed from the
20 United States Navy and United States Department of Interior to The Aleut Corporation ("TAC").
21 TAC is an Alaska Native regional corporation established under the Alaska Native Claims
22 Settlement Act.⁵ TAC represents the indigenous people of the Aleutian Islands, including Adak
23 Island. TAC is also represented through membership positions in ARC.
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27 ⁵ 43 U.S.C. §1606.
28

1 AEE has obtained a leasehold interest in the existing communications facilities
2 previously used for the Adak Navel Complex as an interim means to provide at least some level
3 of local telephone service to the public on Adak Island. AEE will own all future additions and
4 improvements constructed to provide certificated local exchange telecommunications service.
5 On October 8, 2004, AEE was granted a temporary Certificate of Public Convenience and
6 Necessity by the RCA for the provision of local exchange telecommunications service within its
7 service area, and AEE has initiated service to customers under rates approved by the RCA.⁶
8 Because the military provided its own communications services on Adak Island over the decades
9 that the Adak Navel Complex was in use, AEE's certificated service area has never been
10 included within any USF study area and has never been served by a designated ETC. AEE
11 connects to the public switched network through an AT&T Alascom interexchange service
12 satellite earth station located on Adak Island.
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15 There are currently 62 full-time residents on Adak Island plus a large number of
16 contractors providing various services relating to ordinance disposal, environmental remediation,
17 asset evaluation, wildlife preservation, and other services. Currently, the number of access lines
18 on Adak varies from approximately 75 for full-time residents to approximately 160 during the
19 summer months. There is a potential for future economic expansion and growth in local
20 telephone service subscribership from marine refueling activity (Adak has over 20 million
21 gallons of petroleum storage), commercial fishing and fish processing, possible construction of a
22 missile defense site, and other activities. However, all of this potential economic activity
23 requires reliable local telecommunications services provided at reasonable rates.
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26 ⁶ See Attachment D, AEE Rate Schedule 8.01, Tariff Sheet No. 97. This tariff sheet was
27 approved by the RCA effective January 19, 2005.

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The existing telephone plant was installed by the military over the course of several decades. Much of this plant is degraded, outdated, and inadequate for long term, reliable provision of regulated local exchange service to customers. AEE has been using this plant, along with a new, interim digital switch, as a short term, temporary measure to ensure continuity of at least some level of service to the inhabitants of Adak Island. However, to provide adequate, reliable, regulated telephone service in this growing rural area, AEE must in the coming months replace virtually all of the existing plant and undertake expanded administrative, operations, and maintenance responsibilities. Compared to its relatively limited, temporary operating responsibilities in the past, these responsibilities require AEE now, for the first time, to undertake substantial construction and installation projects and incur significantly higher costs associated with obtaining a skilled workforce, engineering services, and accounting and regulatory resources.

To meet these new demands, AEE has applied for a \$6.2 million loan from the RUS to cover the costs necessary for the provision of adequate and reliable local exchange service, including: (1) replacement of the existing PBX, power plant, and ancillary equipment with fully compliant switches and equipment; (2) establishment of a fiber to the premise ("FTTP") outside plant distribution system; (3) deployment of paging services on the island; (4) central office improvements; and (5) engineering and other costs. Although no firm completion date has been guaranteed, AEE expects that the RUS loan will be approved within 60 days.

1 **III. Good Cause Exists for the Requested Waivers**

2 As a general matter, Commission rules may be waived for good cause.⁷ Such a
3 waiver is appropriate where special circumstances warrant a departure from the general rule and
4 such departure will serve the public interest.⁸ In addition, the waiver should serve the policy
5 goals and principles which underlie the waived rule.⁹ The Commission “may take into account
6 considerations of hardship, equity, or more effective implementation of overall policy on an
7 individual basis.”¹⁰ Each of the waivers requested herein satisfies these standards.

8 **A. Study Area Waiver**

9 AEE believes that it is not required to seek a waiver of the definition of “study
10 area contained in the Appendix-Glossary of Part 36 of the Commission’s rules for the purpose of
11 establishing a study area serving a heretofore unserved area.¹¹ In *Skyline I*, the Commission
12 clarified that “a study area waiver request must be filed with the Commission where a company
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⁷ 47 C.F.R. § 1.3.

18 ⁸ *City of Angels Broadcasting, Inc. v. FCC*, 745 F.2d 656, 662-63 (D.C. Cir. 1984).

19 ⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972)
20 (“*WAIT Radio*”).

21 ¹⁰ *M&L Enterprises, Inc., d/b/a Skyline Telephone Company, Petition for Waiver of Sections*
22 *36.611, 36.612, and 69.2(hh) of the Commission’s Rules*, Order, 19 FCC Rcd 6761, para. 7
23 (2004) (“*Skyline I*”) (citing *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular Telephone*
24 *Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)).

25 ¹¹ *See Request for Clarification Filed by the National Exchange Carrier Association, Inc., and*
26 *Petitions for Waivers Filed by Alaska Telephone Company, Ducor Telephone Company, and*
27 *Kingsgate Telephone, Inc., Concerning the Definition of “Study Area” Contained in the Part 36*
28 *Appendix-Glossary of the Commission’s Rules*, Memorandum Opinion and Order, AAD 95-175,
 AAD 96-29, AAD 96-5, 11 FCC Rcd 8156, 8160 (Com. Car. Bur. 1996) (“*Study Area Waiver*
 Exceptions Order”).

1 is seeking to create a new study area from within one or more existing study areas.”¹² In contrast
2 to the facts in *Skyline I*, AEE’s proposed study area (its certificated service area) has never been
3 part of any existing study area. Moreover, this area has never been served by any certificated
4 local exchange carrier or designated ETC. Accordingly, AEE believes it is not required to seek a
5 study area waiver.
6

7 If, however, the Commission determines that such a waiver is required, AEE
8 hereby requests that the Commission grant that waiver. A study area waiver is appropriate if (1)
9 the change in study area boundaries does not adversely affect the USF; (2) no state commission
10 having regulatory authority opposes the change; and (3) the public interest will be served.¹³
11 Applying these criteria, the Commission, on its own motion, granted a study area waiver to the
12 new local exchange carrier in *Skyline I*.
13

14 In the instant case, AEE’s circumstances satisfy each of these three criteria. First,
15 the waiver will not adversely affect the USF because it will not result in an annual aggregate
16 shift in high-cost support in an amount equal to or greater than one percent of the total high-cost
17 fund for the funding year.¹⁴ Based on the Universal Service Administrative Company’s
18 (“USAC’s”) first quarter 2005 projections, the total annual high-cost support for the nation will
19 be approximately \$3.907 billion (\$976,904,832 x 4).¹⁵ One percent of that amount is in excess of
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23 ¹² *Skyline I*, para. 13.

24 ¹³ *Id.* at paras. 5, 13.

25 ¹⁴ *See id.* at para. 15 and n.37.

26 ¹⁵ USAC Quarterly Administrative Filing 2004, First Quarter 2005 Appendix HC01, available at
27 www.universalservice.org/overview/filings.

1 \$39 million. AEE's projected annual high-cost support for 2005 is \$499,865, an amount that is
2 substantially less than one percent of the total high-cost support fund.
3

4 Second, the RCA has not opposed AEE's certificated service area constituting a
5 study area for high-cost support purposes. AEE is in the process of requesting a letter from the
6 RCA expressly stating non-opposition to this requested waiver.

7 Third, the public interest is served by a waiver of the study area freeze to
8 recognize AEE's certificated service area as a study area for regulatory purposes. AEE is
9 currently providing local telephone service for 75 to 160 access lines that otherwise would have
10 no service within an extremely isolated, rural, island environment. In addition, AEE is in the
11 process of obtaining \$6.2 million of debt financing to make needed plant investments and to
12 improve and expand local telephone service to rural customers on Adak Island. Like the factors
13 that the Commission found persuasive in *Skyline I*, these factors demonstrate AEE's commitment
14 to provide reliable telecommunications service in the Adak Island service area. Therefore,
15 waiver of the study area boundary freeze in the instant case will serve the public interest.
16
17

18 **B. Waiver of the Sections 36.611 and 36.612**

19 AEE is a "rural telephone company" under section 153(37) of the Act¹⁶ and will
20 be providing telephone service within a high-cost rural study area. Accordingly, it will be
21 eligible to receive USF cost recovery assistance. Under the Commission's rules, calculation of
22 high-cost loop support is based on historical cost information. However, as a new company
23 proposing to serve an area that has not previously been served by any certificated carrier or ETC,
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27 ¹⁶ 47 U.S.C. § 153(37).
28

1 AEE does not have historical cost information reflecting the high costs that AEE will soon incur
2 to provide adequate and reliable service on Adak Island.

3
4 AEE's historical cost information is inadequate for high-cost loop support
5 because it reflects only the initial, limited, temporary operation of degraded, outdated telephone
6 facilities that were installed by the military over several decades for base use. AEE's historical
7 costs do not reflect the costs associated with the equipment, personnel, and operations necessary
8 for the provision of reliable, regulated telephone service. Virtually all of the existing plant will
9 be replaced with new facilities in 2005 and AEE will incur additional labor, administrative, and
10 regulatory costs in order to provide reliable, regulated, utility-grade service to current and future
11 customers. Accordingly, AEE's historical cost information is inadequate for calculating the
12 high-cost loop support that AEE will need to provide reliable, affordable local telephone service
13 in its rural study area.
14

15 Under these circumstances, strict application of sections 36.611 and 36.612 of the
16 Commission's rules would preclude AEE from receiving high-cost loop support related to AEE's
17 new telephone system and expanded administration and operations until 2007¹⁷ (although the
18 quarterly update provision of section 36.612 could reduce this period to some extent).¹⁸ During
19 this period, AEE would be compelled to continue to look to its rural local exchange customers
20 for cost recovery of amounts that otherwise should be recovered through the USF in a manner
21 consistent with established Commission policy and practice.
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25 ¹⁷ The data submission and filing requirements of Part 36 of the Commission's rules operate to
26 postpone the eligibility of a newly established local exchange carrier for receipt of USF support
27 until its third year of operation. *See, e.g., Skyline I*, para. 19.

28 ¹⁸ *Skyline I*, para. 20.

1 The primary goal of the USF program is to promote the nationwide availability of
2 reasonably priced telephone services by providing “direct assistance to the areas where it is most
3 needed to ensure that telephone rates remain affordable for the average subscriber.”¹⁹ In this
4 instance, adherence to the rules will frustrate, rather than further, this goal by denying timely cost
5 recovery from the USF to a new company that has only recently initiated certificated local
6 telephone service to a rural area and is in the process of incurring significant new costs necessary
7 to provide adequate and reliable telephone service to rural customers. To remedy this situation,
8 AEE seeks a directive to USAC to calculate and remit USF support to AEE (upon AEE obtaining
9 RCA designation as an ETC) with such calculation to be based temporarily on current and
10 projected, rather than historical, costs. AEE seeks this treatment until such time as AEE’s 2005
11 costs become historical costs upon which USF recovery can be calculated under the normal
12 procedures set forth in sections 36.611 and 36.612 of the Commission’s rules.

13 USF is intended to address the AEE situation. At present, AEE’s basic local
14 exchange rates are already extremely high: \$100 per month for residential customers and \$130
15 per month for business customers.²⁰ Once AEE begins receiving USF support and participation
16 in the NECA pools and tariffs, the RCA will require AEE to reduce its local service rates to
17 reflect these sources of revenue. AEE emphasizes that there is an urgent need to expedite this
18 process, as the current local service rates are extremely high. Again, under a strict application of
19 the Commission’s historical cost rules, AEE’s customers would have to wait at least two years
20 for the much needed local service rate relief that will result from high-cost loop support related

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25 ¹⁹ *MTS and WATS Market Structure, Amendment of Part 67 of the Commission’s Rules and*
26 *Establishment of a Joint Board, Recommended Decision and Order, CC Docket Nos. 78-72, 80-*
27 *286, para. 58 (rel. Nov. 23, 1984).*

28 ²⁰ *See Attachment C.*

1 to its current and projected equipment and operations costs. In the mean time, AEE's high local
2 service rates will also continue to discourage growth in subscribership to local telephone service
3 and jeopardize the future affordability of telephone service in AEE's rural service area. These
4 results are directly contrary to the fundamental goal of the USF program:
5

6 The Commission established the USF program to promote the
7 nationwide availability of telephone service at reasonable rates.
8 Toward this end, USF support permits high-cost LECs to reduce
9 local rates by recovering additional expenses from the interstate
10 services they provide.²¹

11 To better serve this public policy goal²² and to more economically serve its
12 subscribers, AEE seeks a waiver of the historical cost requirements of sections 36.611 and
13 36.612 of the Commission's rules. Granting this waiver will permit AEE to receive USF
14 payments promptly for its initial operations based on current and projected, rather than historical,
15 costs and ensure administration of the USF in a manner consistent with the Commission's goal
16 of assisting local exchange carriers serving high-cost areas in maintaining affordable local
17 service rates. Granting this waiver will also serve the public interest by allowing AEE to provide
18 reliable and economical service to an area that has previously not been included in any USF
19 study area or served by an ETC.

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22 ²¹ *Border to Border Communications, Inc., Petition for Waiver of Sections 36.611 and 36.612 of*
23 *the Commission's Rules*, Memorandum Opinion and Order, AAD 94-61, 10 FCC Rcd. 5055,
24 5055 (Com. Car. Bur. 1995) ("*Border to Border*") (citation omitted).

25 ²² The Act codifies support mechanisms to preserve and advance universal service. Congress
26 has directed the Commission to establish universal service policies which embody, *inter alia*, the
27 principle that "[c]onsumers in all regions of the Nation, including low-income consumers and
28 those in rural, insular and high cost areas, should have access to telecommunications and
information services . . . at rates that are reasonably comparable to rates charged for similar
services in urban areas." 47 U.S.C. § 254(b)(3).

1 Cost recovery without this waiver would place unacceptable pressures on local
2 rates that are already extremely high, contrary to the very purposes of the USF program. Such
3 rates would further discourage subscription to local telephone service and jeopardize the future
4 availability of service, results which are completely contrary to the goals of the USF rules.
5 Consequently, application of the historic cost requirements would frustrate, rather than foster,
6 realization of the goals of the USF program. Accordingly, AEE respectfully requests waiver of
7 the historic cost requirements of sections 36.611 and 36.612 of the Commission's rules for an
8 interim period as described in greater detail below.
9

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11 **C. Proposed Interim Methodology for High-Cost Loop Support Calculations**

12 AEE proposes to submit to NECA a rolling annualized average of current costs,
13 which will be subject to quarterly true-up adjustments based on actual costs. This methodology
14 previously has met with Commission approval.²³ Final high-cost loop support payments to AEE
15 for the interim period would be based on actual costs for that period. Final payments for periods
16 subsequent to that interim period would be based on the conventional historic data upon which
17 USF payments are based. Data to support initial high-cost support payments to AEE are set forth
18 on Attachment E. Under this proposal, AEE would begin receiving high-cost loop support
19 payments (upon receiving RCA ETC designation) for the period beginning January 1, 2005.
20 Those payments would be calculated based on the estimates set forth in Attachment E, subject to
21 the quarterly true-up mechanism described as follows: For the first quarter (January through
22 March) of 2005, AEE would submit to NECA its actual costs for that quarter by June 30, 2005.
23 This process would continue quarterly, next using six months of actual data, then nine months of
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27 ²³ *E.g., Border to Border*, 10 FCC Rcd at 5056.

1 actual data, etc., until such time as the USF high-cost loop support calculation can be made
2 entirely on the basis of actual historical data. AEE emphasizes that this proposal requires waiver
3 of the Commission's rules for a brief period, lasting only until such time as the calculations
4 reflecting AEE's new plant and expanded operations can be based on historic data, as required
5 under sections 36.611 and 36.612 for AEE's USF high-cost loop support.
6

7 **D. Waivers of Sections 54.301(b) and 54.903(a)(3) for LSS and ICLS**

8 In a recent order,²⁴ the Commission, on its own motion, granted additional
9 waivers to M&L Enterprises, Inc., d/b/a Skyline Telephone Company ("Skyline Telephone") to
10 effectuate the waivers it intended to grant in *Skyline I*. In particular, the Commission found that
11 its decision to allow Skyline prompt access to "high-cost universal service support" should apply
12 to LSS and ICLS as well as to high-cost loop support.²⁵ However, to effectuate that result, it
13 was necessary to also grant Skyline Telephone a waiver of the deadlines for filing information
14 with USAC relating to LSS and to ICLS as required under section 54.301(b) and section
15 54.903(a) of the Commission's rules, respectively.²⁶ In addition, the Commission also
16 determined that it was necessary to issue a waiver of the state certification filing requirements set
17 forth in section 54.314(d) of the Commission's rules to allow Skyline Telephone to be eligible to
18 promptly receive high-cost support.²⁷
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23 ²⁴ *M&L Enterprises, Inc., d/b/a Skyline Telephone Company, Waiver of Sections 54.301(b),*
24 *54.314(d), and 54.903(a) of the Commission's Rules*, Order, CC Docket No. 96-45, DA 05-84
25 (rel. Jan. 14, 2005) ("*Skyline II*").

26 ²⁵ *Id.* at para. 9.

27 ²⁶ *Id.* at para. 5.

28 ²⁷ *Id.* at para. 4.

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For the same reasons as were stated previously with regard to the waiver of the Commission's rules for high-cost loop support, good cause exists to grant AEE these additional waivers to allow AEE to promptly be eligible to receive high-cost support upon obtaining ETC designation. Allowing AEE to promptly be eligible to receive high-cost loop support, LSS, and ICLS will allow much needed reductions to AEE's current local service rates and will encourage local telephone subscribership in a rural area, consistent with the goals of universal service. For these reasons, AEE requests a waiver of the filing deadlines set forth in sections 54.301(b) and 54.903(a) of the Commission's rules and a waiver of the October 1, 2004, and January 1, 2005, state USF certification deadlines set forth in section 54.314(d),²⁸ as necessary to allow AEE to receive LSS and ICLS for the first quarter 2005 (upon obtaining ETC designation).

E. Waiver of Section 69.2(hh) and Section 69.3(e)(6)

As was discussed in *Skyline I*, in order to be a member of NECA and to participate in the NECA pools and tariffs, a carrier must be a "telephone company," as defined in Part 69 of the Commission's rules.²⁹ Section 69.2(hh) of the Commission's rules defines a "telephone company" as an incumbent local exchange carrier ("incumbent LEC") as defined in section 251(h)(1) of the Act. In addition, section 36.611 of the Commission's rules applies only to incumbent LECs.³⁰ Section 251(h)(1) of the Act defines an "incumbent local exchange carrier" as a provider of telephone exchange service and a member of NECA on the date of

²⁸ AEE will request that the RCA provide the necessary USF certification for AEE at its earliest opportunity.

²⁹ *Skyline I*, para. 24.

³⁰ *Id.* at para. 24; 47 C.F.R. § 36.611.

1 enactment of the 1996 Act (or a successor or assign of such a carrier).³¹ As a newly established
2 carrier that is not a successor or assign of an incumbent LEC, AEE does not meet the statutory
3 definition of an incumbent LEC and, thus, does not meet the definition of a “telephone
4 company” in section 69.2(hh) of the Commission’s rules.
5

6 However, as was the case for Skyline Telephone in *Skyline I*, AEE’s
7 circumstances warrant granting AEE a waiver of section 69.2(hh). The purpose of the incumbent
8 LEC restrictions in Parts 36,³² 54,³³ and 69³⁴ is to distinguish competitive LECs from incumbent
9 LECs for purposes of calculating access charges and universal service support, not to impose
10 interconnection requirements.³⁵ AEE is the sole provider of local exchange service in its
11 certificated service area; it is not a competitive LEC. In addition, as a rural telephone company,
12 AEE is exempt from the interconnection requirements of section 251(c) of the Act until it
13 receives a bona fide request for interconnection, services, or network elements, and the RCA
14 makes the requisite findings to terminate AEE’s rural exemption.³⁶ Accordingly, the purposes
15 underlying the incumbent LEC requirements in Parts 36, 54, and 69 of the Commission’s rules
16 are not applicable to AEE’s request to receive high-cost universal service support and to
17 participate in NECA.
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19

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21 _____
22 ³¹ 47 U.S.C. § 251(h)(1).

23 ³² See 47 C.F.R. § 36.611.

24 ³³ See 47 C.F.R. §§ 54.301 and 54.303.

25 ³⁴ See 47 C.F.R. § 69.2(hh).

26 ³⁵ *Skyline I*, para. 27.

27 ³⁶ *Id.* (citing 47 U.S.C. § 251(f)).
28

1 Participation in NECA will allow AEE to avoid the costs of filing and
2 maintaining its own company-specific interstate tariffs. AEE currently provides service for 75 to
3 160 access lines, depending on the season. With such few customers, AEE would incur
4 disproportionately excessive costs to prepare company-specific tariffs. In addition, because of
5 the high cost of providing service to a relatively small number of customers in AEE's remote,
6 isolated location, AEE's company-specific rates have the potential to be extremely high in the
7 future. Accordingly, it is in the public interest to grant the requested waiver to allow AEE and its
8 customers the benefit of cost savings and lower rates available through NECA participation.
9

10
11 In addition to a waiver of the definition of "telephone company" in
12 section 69.2(hh), AEE has been informed by NECA that it must also obtain a waiver of
13 section 69.3(e)(6) of the Commission's rules to allow AEE to enter NECA's Tariff No. 5 outside
14 the annual election period. Therefore, to help expedite its participation in NECA and the public
15 interest benefits such participation will provide to AEE and its customers, AEE also requests a
16 waiver of section 69.3(e)(6) of the Commission's rules as necessary to allow it to enter NECA's
17 Tariff FCC No. 5 outside of the annual election period.
18

19 For all of the foregoing reasons, AEE requests that the Commission waive the
20 definition of "telephone company" in section 69.2(hh) of the Commission's rules; waive the
21 incumbent LEC requirements of sections 36.611, 54.301, and 54.303 of the Commission's rules;
22 and waive section 69.3(e)(6) of the Commission's rules to allow AEE to be allowed to promptly
23 participate in NECA pools and tariffs and receive high-cost universal service support.
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1 **VI. Conclusion**

2 AEE respectfully requests the following waivers:

3
4 (1) If the Commission determines it is necessary, a waiver of the definition of
5 “study area” contained in the Appendix-Glossary of Part 36 of the Commission’s rules;

6 (2) Waiver of sections 36.611 and 36.612 of the Commission’s historical cost
7 rules to allow AEE immediate access to USF high-cost loop support, effective January 1, 2005,
8 based on AEE’s current data for an interim period;

9 (3) Waiver of the October 1, 2004, and January 1, 2005, state USF
10 certification deadlines set forth in section 54.314(d) of the Commission’s rules;

11 (4) Waiver of sections 54.301(b) and 54.903(a)(3) of the Commission’s rules,
12 to allow AEE to be eligible to receive local switching support (“LSS”) and interstate common
13 line support (“ICLS”) for the period beginning January 1, 2005; and
14

15 (5) Waivers of the definition of “telephone company” in section 69.2(hh) and
16 of the annual election filing deadline in section 69.3(e)(6) to allow AEE to become a member of
17 NECA and to immediately participate in NECA pools and tariffs.
18

19 Granting these waivers will ensure administration of the USF in a manner
20 consistent with the Commission’s goal of assisting local exchange carriers in serving high-cost
21 rural areas and maintaining affordable local service rates. Granting these waivers will also allow
22 AEE and its customers the benefit of cost savings and lower rates available through participation
23 in NECA pools and tariffs.
24

25 In the event any additional waivers are necessary to expedite AEE’s receipt of
26 USF support and participation in NECA pools and tariffs, AEE requests that such waivers be
27 considered and granted on the Commission’s own motion. If some of the waivers requested
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herein will require substantially more time for review than others, AEE respectfully requests that those waiver requests be severed and those requiring less time be ruled upon while review of the other requests is pending.

RESPECTFULLY SUBMITTED this 9th day of February, 2005.

KEMPEL, HUFFMAN AND ELLIS, P.C.
Attorneys for Adak Eagle Enterprises, LLC



Dean D. Thompson

LAW OFFICES OF
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(907) 277-1604

STATE OF ALASKA

DEPARTMENT OF COMMUNITY AND
ECONOMIC DEVELOPMENT
REGULATORY COMMISSION OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

701 WEST EIGHTH AVENUE, SUITE 300
ANCHORAGE, ALASKA 99501-3469
PHONE: (907) 276-6222
FAX: (907) 276-0160
TTY: (907) 276-4533
WEBSITE: www.state.ak.us/rca/

December 15, 2004

In reply refer to: Administrative Section
File: U-03-76(1)

Mr. Larry Mayes, General Manager
Adak Eagle, LLC d/b/a
Adak Telephone Utility
P.O. Box 1942
Adak, AK 99546-1942

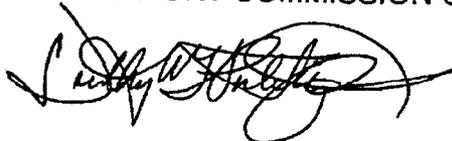
Dear Mr. Mayes:

Enclosed you will find a new parchment for Certificate of Public Convenience and Necessity No. 702 (Certificate). The service area description and the chronology are attached as Appendix A.

Review the Certificate parchment and Appendix A to ensure they are accurate. Also, please return any Certificates and Appendix A's previously issued to you. Feel free to contact me at (907) 276-6222, ex. 109, if you have any questions pertaining to your Certificate Parchment or if any corrections need to be made to your Certificate Parchment as well.

Sincerely,

REGULATORY COMMISSION OF ALASKA



Dorothy Tauaese-Puletapuai
Administrative Assistant

Enclosures

ATTACHMENT A
PAGE 1 OF 3

Regulatory Commission of Alaska
Certificate
of
Public Convenience and Necessity
No. 702

Having found that the grantee of this certificate is fit, willing, and able to provide the utility services applied for and that such services are required for the convenience and necessity of the public, the Regulatory Commission of Alaska, pursuant to the authority vested in it by AS 42.05, hereby issues this temporary certificate of Public Convenience and Necessity to

Adak Eagle Enterprises LLC d/b/a Adak Telephone Utility

authorizing it to operate a public utility, as defined by AS 42.05.990(4) (B) for the purpose of furnishing

**TELECOMMUNICATIONS SERVICE
(LOCAL EXCHANGE)**

This Certificate is issued under, and subject to, the provisions of AS 42.05 and all rules, regulations, and orders from time to time promulgated by the Commission governing the rates, charges, services, facilities, and practices of utility operations of the kind authorized herein.

The specific nature, scope, terms, conditions, and limitations of the authority granted by this Certificate, as amended to date, are set forth in the appendix hereto and in the following order(s) of the Commission which, by this reference, are incorporated in and made a part hereof as though fully set forth herein.

**Docket No.
U-03-76(1)**

**Date of Order
October 8, 2004**

(Chronology and service area description shown on the attached Appendix A)

IN WITNESS THEREOF, the undersigned members of the Commission have executed this Certificate of Public Convenience and Necessity at Anchorage, Alaska on this 16th day of December 2004.

Regulatory Commission of Alaska


(CHAIR)


(COMMISSIONER)


(COMMISSIONER)


(COMMISSIONER)


(COMMISSIONER)

APPENDIX A

Certificate of Public Convenience
and Necessity No. 702 Granted to

Adak Eagle Enterprises LLC d/b/a Adak Telephone Utility
(Local Exchange Telephone Utility)

DESCRIPTION OF SERVICE AREA:

T94S	R194W	Sections:	All
T95S	R194W	Sections:	All
T95S	R195W	Sections:	All
T95S	R196W	Sections:	All
T96S	R193W	Sections:	All
T96S	R194W	Sections:	All
T96S	R195W	Sections:	All
T96S	R196W	Sections:	All Sections on Adak Island
T97S	R195W	Sections:	All Sections of North of 51°47'15" North Latitude
T97S	R196W	Sections:	All Sections of North of 51°47'15" North Latitude
T97S	R197W	Sections:	All Sections of North of 51°47'15" North Latitude on Adak Island

(All of the above in reference to the Seward Meridian)

CHRONOLOGY:

Temporary Certificate Granted: 10/08/04 (U-03-76(1))

1 STATE OF ALASKA

2 THE REGULATORY COMMISSION OF ALASKA

3 Before Commissioners:

Kate Giard, Chairman
Dave Harbour
Mark K. Johnson
Anthony A. Price
James S. Strandberg

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7 In the Matter of the Application by ADAK)
EAGLE ENTERPRISE LLC d/b/a ADAK)
8 TELEPHONE UTILITY for a Certificate of)
Public Convenience and Necessity to Provide)
9 Local Exchange Service in Alaska)

U-03-76

ORDER NO. 3

10
11 ORDER CLARIFYING ORDER U-03-76(1),
12 APPROVING TARIFF SHEETS, REQUIRING FILINGS,
13 AND AFFIRMING ELECTRONIC RULING

14 BY THE COMMISSION:

15 Summary

16 We clarify which tariff sheets filed by Adak Eagle Enterprise LLC d/b/a
17 Adak Telephone Utility (AEE) were approved by Order U-03-76(1),¹ provide their
18 effective dates, and approve other tariff sheets. We require AEE to file documentation
19 of a Rural Utility Services (RUS) loan commitment. We affirm our electronic ruling
20 denying a request for a status conference.

21
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23
24 ¹Order Conditionally Approving Application; Approving Tariff, in part; Granting
25 Temporary Certificate; Revoking Temporary Operating Authority; Closing Docket
26 U-00-137; and Requiring Filings, Order U-00-137(9)/U-03-76(1), dated October 8, 2004
(Order U-03-76(1)).

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

1 Background

2 We conditionally approved AEE's application and granted AEE a
3 temporary certificate.² In addition, we required AEE to file, among other things, revised
4 tariff sheets identified in Appendix A to Order U-03-76(1). On October 28, 2004, AEE
5 filed tariff sheet revisions and an explanation of why certain revisions identified in
6 Appendix A to Order U-03-76(1) should not occur.³

7 On November 22, 2004, AEE requested that we convert its temporary
8 certificate to a permanent certificate. AEE stated that RUS required AEE to obtain a
9 permanent certificate before RUS would release loan funds to AEE.

10 By Order U-03-76(2),⁴ we required AEE to revise its proposed tariff further,
11 file an updated technical report of its facilities in Adak, and provide documentation of a
12 RUS loan commitment. On January 3, 2005, AEE filed revised tariff sheets, updated
13 engineering studies, and financial statements.⁵

14 On January 4, 2005, AEE requested that a status conference be held
15 January 7, 2005, or at the earliest time available.⁶ AEE stated that the purpose of the
16 conference was to provide us, among other things, with an update of its plans for
17 upgrading the telephone services in Adak.

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21 ² See Order U-03-76(1).

22 ³ *Notice of Filing Revised Tariff*, filed October 28, 2004.

23 ⁴ Order U-03-76(2), *Order Amending Docket Title and Requiring Filing*, dated
December 22, 2004.

24 ⁵ *Submission of Tariff Filings and Updated Engineering Studies in Compliance*
25 *with U-03-076(2) and Additional Financial Information*, filed January 3, 2005.

26 ⁶ *Expedited Request for Status Conference*, filed January 4, 2005.

1 Discussion

2 Revised Tariff Sheets

3 We approved, in part, the proposed tariff AEE filed on March 25, 2004,
4 and required it to revise certain of the tariff sheets or to provide an explanation of why
5 revision should not occur.⁷ We clarify that tariff Sheet Nos. 5, 9, 24-32, 34-39, and
6 47-51, filed on March 25, 2004, were approved with an effective date of
7 October 8, 2004, by Order U-03-76(1).

8 On October 28, 2004, AEE filed a revised tariff and an explanation of why
9 certain of the tariff revisions should not be made.⁸ We reviewed this filing and required
10 AEE to file tariff revisions regarding its proposed direct inward dialing (DID) service and
11 directory assistance services.⁹ While we found all other tariff sheets in this filing to be
12 generally reasonable, we did not specifically approve those sheets by Order U-03-76(2).
13 We approve the tariff sheets not related to DID or directory assistance services, tariff
14 Sheet Nos. 1-3, 6-8, 10-23, 33, 40-46, 65-98, and 101-113, filed on October 28, 2004,
15 effective the date of this Order.

16 On January 3, 2005, AEE submitted tariff revisions for DID and directory
17 assistance services. AEE deleted a section in its proposed tariff which required
18 customers for DID service to enter into a contract for a minimum period of one year.
19 AEE also provided tariff rates and rules for providing directory listings and related
20 databases to directory service providers. We believe that the tariff revisions are
21 reasonable and consistent with our regulations. We therefore approve AEE's revised
22

23 ⁷ See Order U-03-76(1).

24 ⁸ Notice of Filing Revised Tariff, filed October 28, 2004.

25 ⁹ Order U-03-76(2), Order Amending Docket Title and Requiring Filing, dated
26 December 22, 2004.

1 tariff sheets for direct inward dialing (DID) and directory assistance and directory
2 services, filed on October 28, 2004, tariff Sheet Nos. 53-63 and 99-100, effective the
3 date of this Order. We also approve tariff Sheet Nos. 4, 52, 64, and 100.1, filed on
4 January 3, 2005, effective the date of this Order.

5 Technical Report and RUS Loan Commitment

6 We required AEE to file an updated technical report and additional
7 financing data that demonstrates financial backing.¹⁰ On January 3, 2005, AEE filed an
8 updated technical report and financial data related to its upgrade plan. It has not yet
9 provided documentation of a loan commitment from RUS. When the RUS loan
10 commitment documentation is filed, we can determine AEE's financial fitness.
11 Therefore, we require AEE to file documentation of a RUS loan commitment when it
12 becomes available.

13 Expedited Request for Status Conference

14 We deny the expedited request by AEE for a status conference. We are
15 not convinced that the purpose stated by AEE for a status conference warrants the
16 need for it. We have indicated the requirements we need to move this proceeding
17 forward.¹¹ At this time we are primarily awaiting proof of financing from RUS for AEE.
18 The status conference, therefore, appears to be unjustified. However, AEE may file
19 additional information into the record if there are matters related to its services or
20 facilities that it believes we should be made aware.

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¹⁰ See Order U-03-76(2).

25 ¹¹ See Orders U-03-76(1) and U-03-76(2).
26

1 Electronic Ruling

2 We affirm the electronic ruling issued on January 5, 2005, granting the
3 request for expedited consideration of AEE's request for a status conference and
4 denying the request for a status conference.

5
6 ORDER

7 THE COMMISSION FURTHER ORDERS:

8 1. Tariff Sheet Nos. 5, 9, 24-32, 34-39, and 47-51 filed by Adak Eagle
9 Enterprise LLC d/b/a Adak Telephone Utility on March 25, 2004, are approved, effective
10 October 8, 2004.

11 2. Tariff Sheet Nos. 1-3, 6-8, 10-23, 33, 40-46, 65-98, and 101-113
12 filed by Adak Eagle Enterprise LLC d/b/a Adak Telephone Utility on October 28, 2004,
13 are approved, effective the date of this order.

14 3. Tariff Sheet Nos. 53-63 and 99-100 filed by Adak Eagle Enterprise
15 LLC d/b/a Adak Telephone Utility on October 28, 2004, are approved, effective the date
16 of this order.

17 4. Tariff Sheet Nos. 4, 52, 64, and 100.1 filed by Adak Eagle Enterprise
18 LLC d/b/a Adak Telephone Utility on January 3, 2005, are approved, effective the date
19 of this order.

20 5. Adak Eagle Enterprise LLC d/b/a Adak Telephone Utility shall file a
21 notice from Rural Utility Service when and if it receives conditional loan application
22 approval.

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6. The electronic ruling issued on January 5, 2005 is affirmed.

DATED AND EFFECTIVE at Anchorage, Alaska, this 19th day of January, 2005.

BY DIRECTION OF THE COMMISSION
(Commissioners Kate Giard and Anthony A. Price,
not participating.)



Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

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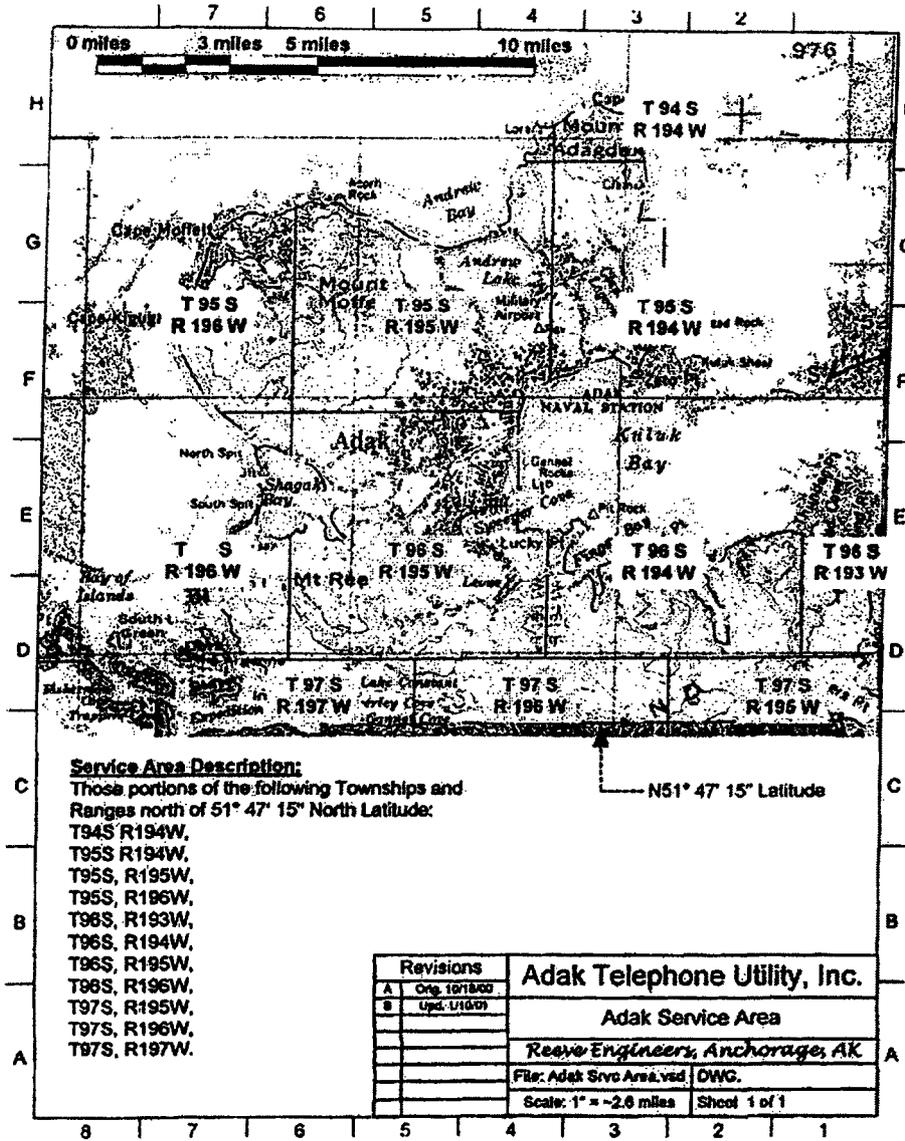
OCT 28 2004

State of Alaska
Regulatory Commission of Alaska

RCA NO. 702 ORIGINAL SHEET NO. 6

CANCELING SHEET NO.

ADAK EAGLE ENTERPRISE, LLC dba ADAK TELEPHONE UTILITY



Pursuant to U-03-76(3)

EFFECTIVE: January 19, 2005

ISSUED BY: ADAK EAGLE ENTERPRISES, LLC dba ADAK TELEPHONE UTILITY

BY: *Larry Mayes*
Larry Mayes

Title: General Manager

ATTACHMENT C

PAGE 2 OF 3

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OCT 28 2004

State of Alaska
Regulatory Commission of Alaska

RCA NO. 702 ORIGINAL SHEET NO. 7

CANCELING SHEET NO.

ADAK EAGLE ENTERPRISE, LLC dba ADAK TELEPHONE UTILITY

SERVICE AREA DESCRIPTION

On Adak Island, that part of the island east of the Bay of Islands and north of Latitude 51°47'15"N.

The area described contains approximately 61,000 acres of land formerly considered the U.S. Naval Facility Military Reservation on Adak Island, Alaska. The area south of 51°47'15"N is designated Aleutian Islands Wilderness.

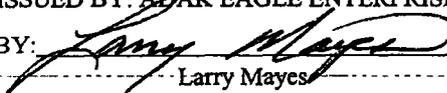
T94S, R194W, All Sections
T95S, R194W, All Sections
T95S, R195W, All Sections
T95S, R196W, All Sections
T96S, R193W, All Sections
T96S, R194W, All Sections
T96S, R195W, All Sections
T96S, R196W, All Sections on Adak Island
T97S, R195W, All Sections North of 51° 47' 15" North Latitude
T97S, R196W, All Sections North of 51° 47' 15" North Latitude
T97S, R197W. All Sections North of 51° 47' 15" North Latitude on Adak Island
In reference to the Seward Meridian.

Pursuant to U-03-76(3)

EFFECTIVE: January 19, 2005

ISSUED BY: ADAK EAGLE ENTERPRISES, LLC dba ADAK TELEPHONE UTILITY

BY:



Larry Mayes

Title: General Manager

ATTACHMENT c

PAGE 3 OF 3

RCA NO. 702

ORIGINAL

SHEET NO. 97

CANCELING

SHEET NO.

ADAK EAGLE ENTERPRISE, LLC dba ADAK TELEPHONE UTILITY

RECEIVED

OCT 28 2004

State of Alaska
Regulatory Commission of Alaska

8.0 RATE SCHEDULES

8.01 Access Service – Business and Residence

(a) Applicability

The rates and terms specified herein apply to customers where facilities and conditions permit within the exchange areas as defined on the map filed as a part of this tariff.

The monthly recurring charges for this service are in addition to all other applicable rates and charges filed in this tariff.

(b) Flat Rate Fees

Monthly Recurring Charge

Business Exchange Access Service

- Single Line (per Access Line)	\$130.00
- Second Business line	\$123.50
- Third Business Line	\$117.00
- Fourth Business Line and more	\$110.50

Business Data Lines \$75.00

Residential Exchange Access Service

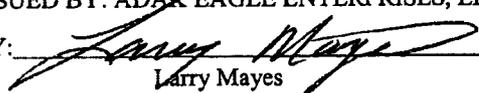
- Single Line	\$100.00
- Second Residential Line	\$75.00

Pursuant to U-03-76(3)

EFFECTIVE: January 19, 2005

ISSUED BY: ADAK EAGLE ENTERPRISES, LLC dba ADAK TELEPHONE UTILITY

BY:


Larry Mayes

Title: General Manager

ATTACHMENT D

PAGE 1 OF 1

Adak Telephone Utility
Estimated Plant & Expenses
2005

Average Investment	
General Support Assets	284,881
Central Office Assets	521,541
Cable & Wire Facilities Assets	<u>2,233,879</u>
	3,040,301
Accumulated Depreciation	(119,585)
	2,920,716
Materials & Supplies	5,000
Customer Deposits	<u>(3,500)</u>
Net Telephone Plant (Average)	2,922,216
Estimated Expenses	
Plant Specific Operations	287,667
Plant Non-Specific Operations	67,988
Depreciation and Amortization	167,395
Customer Operations Expense	44,548
Corporate Operations Expense	<u>387,726</u>
	<u><u>955,324</u></u>